

AMENDED IN SENATE AUGUST 23, 2006

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY MAY 3, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 3023

Introduced by Assembly Member Nunez

February 24, 2006

An act to add Section 6254.23 to the Government Code, and to add Section 7662 to, and to add Article 7.3 (commencing with Section 7665) to Chapter 1 of Division 1 of, the Public Utilities Code, relating to railroads.

LEGISLATIVE COUNSEL'S DIGEST

AB 3023, as amended, Nunez. Railroads: safety.

(1) The existing Federal Rail Safety Act (FRSA) authorizes the Secretary of Transportation to prescribe regulations and issue orders for railroad safety and requires the Secretary of Homeland Security, when prescribing a security regulation or issuing a security order that affects the safety of railroad operations, to consult with the Secretary of Transportation. The FRSA provides for state participation in the enforcement of the safety regulations and orders issued by the Secretary of Transportation or Secretary of Homeland Security, pursuant to an annual certification, and authorizes the respective secretaries to make an agreement with a state to provide investigative and surveillance activities. The FRSA provides that to the extent practicable, laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security are required to be nationally uniform, but authorizes a state to adopt or continue in

force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. A state is additionally authorized to adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security, when necessary to eliminate or reduce an essentially local safety or security hazard, that is not incompatible with a federal law, regulation, or order, and that does not unreasonably burden interstate commerce.

Existing law establishes the safety division of the Public Utilities Commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail. Existing law requires the commission to require every railroad corporation operating in this state to develop a protocol for rapid communications with certain entities in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. Existing law requires a railroad corporation to promptly notify those entities if there is a runaway train or other uncontrolled train movement, in accordance with the communications protocol developed.

This bill would impose certain requirements on a railroad corporation regarding signage, markers, and flagging systems. The bill would require a railroad corporation to notify the commission and the collective bargaining representative of any affected employee of any new utilization of remote control locomotives in the state, on or after January 1, 2007. The bill would require a railroad corporation to provide immediate notification to the Office of Emergency Services (OES) of specified accidents, incidents, and other events that are required to be reported to the Federal Railroad Administration's National Response Center.

~~(2) This~~

(2) Existing law requires the Governor to appoint an executive officer to be the Director of Homeland Security to be in charge of homeland security and to coordinate all homeland security activities,

including homeland security strategy, information analysis related to terrorism, and protection of critical infrastructure from terrorism.

*This bill would enact the Local Community Rail Security Act of 2006. The act would require every operator of rail facilities, by July 1, 2007, to provide, to the commission, the director, and the OES, a risk assessment of ~~all each rail facilities facility~~ in the state that includes specified information. The act would authorize the OES to provide the risk assessment to other law enforcement or emergency personnel. The act would require every rail operator, by January 1, 2008, to develop and implement an infrastructure protection program to protect rail infrastructure in the state from acts of sabotage, terrorism, or other crimes. The act would require each rail operator in the state to provide a copy of its infrastructure protection program to the commission, the director, and the OES and would require the commission, the director, and OES to keep this information confidential. The act would require the commission, in consultation with the OES, to review the infrastructure protection program and would authorize the commission to *conduct inspections to facilitate the review and to order a rail operator to improve, modify, or change its program.* The act would authorize the commission to fine a rail operator ~~up to \$50,000 per day for failure to comply with these requirements or an order of the commission.~~ The act would adopt specific requirements for facilities that handle *hazardous cargo that passes within 15 miles of a community facility* and would authorize the commission to fine a rail operator ~~up to \$50,000 per day for failure to comply with these requirements or an order of the commission.~~ The act would require that rail operators provide communications capability that can accomplish certain tasks. The act would prohibit a rail operator or other covered person from undertaking any act to punish an employee who reports a violation of the act and would provide that an employee subjected to punishment for reporting a violation may seek civil damages of up to \$1,000,000, in addition to any other remedies the court deems appropriate.*

(3) Under the California Public Records Act, certain public records are required to be made available for public inspection.

This bill would exempt from public disclosure, *a risk assessment or railroad infrastructure protection program filed with the commission, the director, or the OES pursuant to the requirements of the act.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6254.23 is added to the Government
 2 Code, to read:
 3 6254.23. Nothing in this chapter or any other provision of law
 4 shall require the disclosure of a *risk assessment or* railroad
 5 infrastructure protection program filed with the Public Utilities
 6 Commission, *the Director of Homeland Security*, and the Office
 7 of Emergency Services pursuant to ~~Section 7665.4~~ *Article 7.3*
 8 *(commencing with Section 7665) of Chapter 1 of Division 4 of*
 9 *the Public Utilities Code.*

10 SEC. 2. Section 7662 is added to the Public Utilities Code, to
 11 read:
 12 7662. (a) (1) A railroad corporation shall place appropriate
 13 signage to notify an engineer of an approaching grade crossing,
 14 consistent with federal law.
 15 (2) Whistle post signs shall be deemed to satisfy this
 16 requirement.
 17 (b) (1) Whenever a railroad issues written or verbal
 18 instructions to employees that may restrict or stop train
 19 movements because of track conditions, structures, persons, or
 20 equipment working, appropriate flags that are readily visible and
 21 easily recognizable to the crews on both passenger and freight
 22 trains shall be displayed as quickly as practicable. Yellow flags
 23 shall be used for temporary speed restrictions, consistent with
 24 paragraphs (2) and (3). Yellow-red flags shall be used, consistent
 25 with paragraphs (4) and (5), when a train may be required to
 26 stop.
 27 (2) Yellow flags shall be used to warn trains to restrict
 28 movement because of track conditions or structures. Except as
 29 provided in paragraph (3), a yellow flag shall be displayed two
 30 miles before the restricted area in order to ensure that train
 31 movement is restricted at the proper location.
 32 (3) When the restricted area is close to a terminal, junction, or
 33 another area, the yellow flag may be displayed less than two
 34 miles before the restricted area. This information shall be
 35 included in the written instructions to employees issued pursuant
 36 to paragraph (1).
 37 (4) Yellow-red flags shall be used to warn trains to be
 38 prepared to stop because of men or equipment working. A

1 yellow-red flag shall be displayed two miles before the restricted
2 area in order to ensure that the train is prepared to stop at the
3 proper location.

4 (5) When the restricted area is close to a terminal, junction, or
5 other area, the yellow-red flag may be displayed less than two
6 miles before the restricted area. This information shall be
7 included in the written instructions to employees issued pursuant
8 to paragraph (1).

9 (6) Flags shall be displayed only on the track affected and
10 shall be displayed to the right side of the track as viewed from
11 the approaching train. The flags shall be displayed to protect all
12 possible access to the restricted area.

13 (c) A railroad corporation shall provide milepost markers to
14 train crews at accurate one-mile intervals. The markers shall be
15 readily visible to the locomotive engineer within the locomotive
16 cab, and shall be kept in good repair and replaced when
17 necessary.

18 (d) A railroad corporation shall place whistle signs to the right
19 of the main track in the direction of approach, exactly
20 one-quarter mile from the entrance to any grade crossing as a
21 point of reference for locomotive engineers who blow the whistle
22 and ring the bell for these grade crossings as a warning to the
23 public. The signs, which shall consist of an "X" or "W" or other
24 identifiable mark or symbol on a square plate mounted on a post,
25 shall be readily visible to a locomotive engineer within the
26 locomotive cab, shall be kept in good repair, and shall be
27 replaced when necessary.

28 (e) A railroad corporation shall place permanent speed signs to
29 the right of the track in the direction of approach, two miles in
30 advance of the point where the speed is either increased or
31 decreased for both passenger and freight trains. The signs shall
32 be readily visible to a locomotive engineer within the locomotive
33 cab, shall be kept in good repair, and shall be replaced when
34 necessary.

35 (f) A railroad corporation shall notify the commission and the
36 collective bargaining representative of any affected employee of
37 any new utilization of remote control locomotives in the state, on
38 or after January 1, 2007.

39 (g) A railroad corporation shall provide immediate notification
40 to the Office of Emergency Services of accidents, incidents, and

1 other events, concurrent with those provided to the Federal
2 Railroad Administration’s National Response Center, as required
3 by Part 225.9 of Title 49 of the Code of Federal Regulations.

4 SEC. 3. Article 7.3 (commencing with Section 7665) is added
5 to Chapter 1 of Division 4 of the Public Utilities Code, to read:

6
7 Article 7.3. Local Community Rail Security Act of 2006

8
9 7665. (a) This article shall be known, and may be cited, as
10 the Local Community Rail Security Act of 2006.

11 (b) The Legislature declares that the purpose of this act is to
12 provide for the security and safety of local communities and local
13 community facilities, to protect local communities from
14 transportation practices that fail to secure rail facilities and
15 equipment from the threat of terrorism, and to ensure proper
16 communication between the owners and operators of rail
17 facilities and equipment with local and state first responders.

18 ~~(e) The requirements of this article shall apply to rail
19 operators, any contractors or subcontractors working on the
20 facilities of the rail operator, and any other individual or
21 corporation performing work on rail facilities in the state. All
22 employees of railroad contractors or subcontractors, and any
23 other individual or corporation performing work on rail facilities
24 in the state, shall receive training adequate to make them as well
25 trained as employees of a rail operator, and shall be required to
26 undergo the same background, skills, and fitness for duty checks
27 as employees of the rail operator.~~

28 7665.2. By July 1, 2007, every operator of rail facilities shall
29 ~~provide to the commission and the Office of Emergency
30 Services, a risk assessment of all rail facilities in the state. The
31 risk assessment shall describe:~~

- 32 ~~(a) All rail facilities and their functions.~~
- 33 ~~(b) The types of cargo that move through the facilities.~~
- 34 ~~(c) Any hazardous cargo that moves through the facilities,
35 including the quantities of hazardous cargo.~~
- 36 ~~(d) Any storage of hazardous cargo in rail facilities.~~
- 37 ~~(e) The distance from rail facilities that transport or store
38 hazardous cargo to community facilities, including schools,
39 hospitals, and nursing homes. *provide a risk assessment to the
40 commission, the Director of Homeland Security, and the Office of*~~

1 *Emergency Services for each rail facility in the state that is under*
2 *its ownership, operation, or control. The risk assessment shall,*
3 *for each rail facility, describe all of the following:*

4 (a) *The location and functions of the rail facility.*

5 (b) *All types of cargo that are moved through, or stored at, the*
6 *rail facility.*

7 (c) *Any hazardous cargo that is moved through, or stored at,*
8 *the rail facility.*

9 (d) *The frequency that any hazardous cargo is moved through,*
10 *or stored at, the rail facility.*

11 ~~(f)~~

12 (e) *A description of the practices of the rail operator to prevent*
13 *acts of sabotage, terrorism or other crimes on rail facilities the*
14 *rail facility.*

15 ~~(g)~~

16 (f) *All training programs that the rail operator requires for its*
17 *employees at the rail facility.*

18 ~~(h)~~

19 (g) *The emergency response procedures of the rail operator to*
20 *deal with acts of sabotage, terrorism, or other crimes at the rail*
21 *facility.*

22 ~~(i)~~

23 (h) *The procedures of the rail operator to communicate with*
24 *local and state law enforcement personnel, emergency personnel,*
25 *transportation officials, and other first responders, in the event of*
26 *acts of sabotage, terrorism, or other crimes at the rail facility.*

27 7665.3. *The Office of Emergency Services may provide the*
28 *risk assessment provided pursuant to Section 7665.2 to other law*
29 *enforcement or emergency personnel.*

30 7665.4. (a) *By January 1, 2008, every rail operator shall*
31 *develop and implement an infrastructure protection program to*
32 *protect rail infrastructure in the state from acts of sabotage,*
33 *terrorism, or other crimes.*

34 (b) (1) *The infrastructure protection program shall provide for*
35 *address the security of all critical infrastructure, including all*
36 *points of vulnerability of the rail system that handle hazardous*
37 *cargo, bridges, tunnels, and signal systems.*

38 (2) *The infrastructure protection program shall provide*
39 *training to personnel of the railroad operator to ensure that the*
40 *railroad personnel are trained and equipped to prevent acts of*

1 ~~sabotage, terrorism, or other crimes, and to respond in the event~~
2 ~~of acts of sabotage, terrorism, or other crimes.~~

3 ~~(e) The infrastructure protection program shall include~~
4 ~~provisions to accommodate regularly scheduled and~~
5 ~~unannounced inspections by the commission's Rail Safety~~
6 ~~Operations Branch personnel trained to determine the condition~~
7 ~~of the rail facilities and the vulnerability of the rail facilities to~~
8 ~~acts of sabotage, terrorism, or other crimes, of all rail facilities,~~
9 ~~including rights-of-way, yards, and other facilities, that handle~~
10 ~~hazardous cargo that move within 15 miles of community~~
11 ~~facilities, including schools, hospitals, and nursing homes.~~
12 ~~training to all employees of the rail operator performing work at~~
13 ~~a rail facility on how to recognize, prevent, and respond to acts~~
14 ~~of sabotage, terrorism, or other crimes.~~

15 ~~(c) (1) All employees of a contractor or subcontractor of a~~
16 ~~rail operator, and any other person performing work at a rail~~
17 ~~facility that is not the employee of the rail operator, shall receive~~
18 ~~training equivalent to that received by employees of the rail~~
19 ~~operator pursuant to paragraph (2) of subdivision (b), within a~~
20 ~~reasonable period of time. The commission, in consultation with~~
21 ~~the Director of Homeland Security, may adopt reasonable rules~~
22 ~~or orders to implement this requirement.~~

23 ~~(2) All employees of a contractor or subcontractor of a rail~~
24 ~~operator, and any other person performing work at a rail facility~~
25 ~~that is not the employee of the rail operator, shall undergo an~~
26 ~~equivalent evaluation of their background, skills, and fitness as~~
27 ~~the rail operator implements for its employees pursuant to its~~
28 ~~infrastructure protection plan. The commission, in consultation~~
29 ~~with the Director of Homeland Security, may adopt reasonable~~
30 ~~rules or orders to implement this requirement.~~

31 ~~(d) Each rail operator in the state shall provide to the~~
32 ~~commission, the Director of Homeland Security, and the Office~~
33 ~~of Emergency Services a copy of its infrastructure protection~~
34 ~~program. Notwithstanding Chapter 3.5 (commencing with~~
35 ~~Section 6250) of Division 7 of Title 1 of the Government Code,~~
36 ~~the commission, the Director of Homeland Security, and the~~
37 ~~Office of Emergency Services shall keep this information~~
38 ~~confidential.~~

39 ~~(e) The infrastructure protection program shall be updated by~~
40 ~~the rail operator at least once every year, and the updated plan~~

1 ~~submitted to local and state law enforcement personnel,~~
2 ~~emergency personnel, transportation officials and other first~~
3 ~~responders. shall be submitted to the commission, the Director of~~
4 ~~Homeland Security, and the Office of Emergency Services.~~

5 (f) The commission, in consultation with the Office of
6 Emergency Services, shall review the infrastructure protection
7 program *submitted by a rail operator; may conduct inspections to*
8 *facilitate the review,* and may order a rail operator to improve,
9 modify, or change its program to comply with the requirements
10 of this article.

11 (g) The commission may fine a rail operator ~~up to fifty~~
12 ~~thousand dollars (\$50,000) per day~~ for failure to comply with the
13 requirements of this section or an order of the commission
14 pursuant to this section.

15 7665.6. ~~(a) Every rail operator shall, for all facilities that~~
16 ~~handle hazardous cargo that passes within 15 miles of a~~
17 ~~community facility, do all the following:~~

18 ~~(1)~~

19 (a) Secure all facilities that handle or store hazardous
20 materials by providing adequate security personnel.

21 ~~(2)~~

22 (b) Store hazardous materials only in secure facilities designed
23 for storage, which shall not include mainline, branch, industrial,
24 or passing tracks not so designed or retrofitted.

25 ~~(3)~~

26 (c) Shall not leave locomotive equipment running while
27 unattended, or leave any unattended locomotive equipment
28 unlocked.

29 ~~(4)~~

30 (d) Shall ensure that the cabs of occupied locomotives are
31 secured from hijacking, sabotage, or terrorism.

32 ~~(5)~~

33 (e) Shall not use remote control locomotives to move
34 hazardous materials over a public crossing unless the remote
35 control operator is able to maintain line-of-sight visibility of the
36 public crossing and visually ensure that all automatic
37 highway-rail grade crossing warning devices are functioning as
38 intended, and it is safe for the train movement to enter the public
39 crossing.

40 ~~(6)~~

1 (f) Shall secure remote control devices to prevent access to
2 those devices by unauthorized personnel.

3 ~~(7) Shall ensure that all employees of a rail facility that
4 transport hazardous materials within 15 miles of a community
5 facility receive training relative to security, shipment of
6 hazardous materials, and terrorism prevention at least once every
7 12 calendar months.~~

8 ~~(b) The commission may fine a rail operator up to fifty
9 thousand dollars (\$50,000) per day for failure to comply with the
10 requirements of this section or an order of the commission
11 pursuant to this section.~~

12 7665.8. Every rail operator shall provide communications
13 capability that can accomplish all of the following:

14 (a) Timely alerting local and state law enforcement personnel,
15 emergency personnel, transportation officials and other first
16 responders in the event of sabotage, terrorism, or other crimes.
17 ~~Railroad radios do not satisfy the requirements of this section.~~

18 (b) Timely provide bridge tenders on moveable bridges the
19 ability to alert local and state law enforcement personnel,
20 emergency personnel, transportation officials and other first
21 responders in the event of sabotage, terrorism, or other crimes.

22 (c) Notify rail workers of the local or national threat level for
23 the rail industry.

24 7666. No rail operator or any other person covered by this
25 article may act to punish an employee who reports a violation of
26 this article. An employee against whom a punitive action is taken
27 may seek civil damages of up to one million dollars (\$1,000,000)
28 from any employer that acts to punish an employee who reports a
29 violation of this article, in addition to any other remedies the
30 court deems appropriate.

31 7667. The provisions of this article are severable. If any
32 provision of this article or its application is held invalid, that
33 invalidity shall not affect other provisions or applications that can
34 be given effect without the invalid provision or application.

O